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**International Brotherhood of Teamsters, Local Union 104, General Teamsters (Excluding Mailers), State of Arizona, an affiliate of International Brotherhood of Teamsters, AFL-CIO (Lakeside Productions Co., d/b/a Blue Rodeo) and (Viacom Productions) and Richard D. Brown and Steve Wagner and Jeff Foster.** Cases 28-CB-4617, 28-CB-4679, 28-CB-4661, and 28-CB-4668

April 29, 1998

## DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Upon charges and amended charges filed by Richard D. Brown on September 26, December 10 and 19, 1996, and February 25, April 18, and October 2, 1997, a charge filed by Steve Wagner on January 28, 1997, and a charge filed by Jeff Foster on February 11, 1997, the General Counsel of the National Labor Relations Board issued an amended consolidated complaint (complaint) on October 7, 1997, against International Brotherhood of Teamsters, Local Union 104, General Teamsters (Excluding Mailers), State of Arizona, an affiliate of International Brotherhood of Teamsters, AFL-CIO, the Respondent, alleging that it has violated Section 8(b)(1)(A) and Section 8(b)(2) of the National Labor Relations Act. Subsequently, on October 20, 1997, the Respondent filed an answer to the complaint. On December 16, 1997, however, the Respondent withdrew its answer.

On December 29, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On January 2, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On January 16, 1998, the Respondent filed a response, which does not dispute the allegations in the motion.<sup>1</sup>

<sup>1</sup> The Respondent's response states that the "Respondent does not generally oppose the Motion." Instead, the response essentially requests that the Board's Order in this case contain narrow injunctive language.

The General Counsel has moved to strike portions of the Respondent's responses to both the Motion for Summary Judgment and in opposition to the General Counsel's motion to strike. We grant the General Counsel's motion to strike those portions of the Respondent's submissions which allege that improper pressures were brought to bear on the General Counsel which frustrated efforts to settle this case. The Respondent's assertions in this regard are immaterial to the matter before us, the General Counsel's Motion for Summary Judgment based on the Respondent's failure to file an answer to the complaint, and the related issue of the appropriate remedy for the Respondent's unfair labor practices. Accordingly, we strike the first full paragraph on p. 2 and fn. 2, of the Respondent's response to the Motion for Summary Judgment, and the first full paragraph on

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

## Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent, on December 16, 1997, withdrew its answer to the complaint. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.<sup>2</sup>

Accordingly, based on the withdrawal of the Respondent's answer to the complaint, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

Lakeside Productions Co., d/b/a Blue Rodeo (Lakeside) is and has been at all material times a California corporation with an office and place of business in Los Angeles, California, where it is engaged as a television program producer. During the 12-month period ending September 26, 1996, Lakeside, in conducting its business operations described above, received gross revenues in excess of \$100,000, and purchased and received at its facilities in the State of California goods, materials, and supplies valued in excess of \$50,000 directly from sources outside the State of California.

Viacom Productions (Viacom) is and has been at all material times a California corporation with an office and place of business in Hollywood, California, where it is engaged as a television program producer. During the 12-month period ending September 26, 1996, Viacom, in conducting its business operations described above, received gross revenues in excess of \$100,000, and purchased and received at its facilities in the State of California goods, materials, and supplies valued in excess of \$50,000 directly from sources outside the State of California.

p. 3 of the Respondent's response in opposition to the motion to strike. In addition, we strike in its entirety the affidavit of the Respondent's counsel attached to its response in opposition to the motion to strike. In light of our Decision and Order, however, we find it unnecessary to pass on the remainder of the General Counsel's motion to strike.

<sup>2</sup> See *Maislin Transport*, 274 NLRB 529 (1985).

We find that Lakeside and Viacom (the Employers) are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent has maintained and operated a hiring hall (the Drivers/Wranglers referral system) for the use of its members or persons wishing to work in the motion picture and television production industry. Under this system, these individuals may register for referrals as applicants for employment with the Employers, and other employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and, when requested by the Employers or other employers engaged in commerce, be referred to them pursuant to the rules, regulations, and bylaws maintained by the Respondent pertaining to its Drivers/Wranglers referral system. This referral system provides, *inter alia*, that registrants “shall be referred out on the same manner (I.E.) on a rotational basis—first in-first out if qualified on open requests only.”

Since about March 28, 1996, the Respondent has maintained rules, regulations, and bylaws pertaining to its Drivers/Wranglers referral system containing, *inter alia*, the following provision:

Any member of the wrangler/driver craft who was on the official list previously and became suspended due to non-payment of dues, shall pay all back dues, re-initiation fees and any strike assessment benefits due and the member would be placed on the bottom of the list (rotation).

At all times since about March 28, 1996, the Respondent has enforced the rule set forth above, which has the effect of limiting the work opportunities of members not subject to a valid union-security agreement.

Since about March 28, 1996, the Respondent has maintained the following provision in its rules, regulations, and bylaws pertaining to its Drivers/Wranglers referral system:

Referrals are made up of drivers/wranglers as they come into [the Respondent] and are accepted in craft by majority vote/and [sic] register on the out of work list.

At all times since about July 28, 1996, the Respondent has applied the rule set forth above in a discriminatory manner by prohibiting individuals from registering on the Respondent’s out-of-work list for referral unless they are a member of the Respondent and they have been approved by a majority vote of the craft members.

From about March 28, 1996, to about February 13, 1997, the Respondent maintained, but did not enforce,

a written rule, relating to its operation of the Drivers/Wranglers referral system, which provides as follows:

Drivers/wranglers who are not available for dispatch either for medical reasons or other valid reasons, will retain their position for the purpose of future dispatches. Any driver/wrangler refusing a dispatch will be dropped to the bottom of the existing out of work list.

On about February 13, 1997, the Respondent received an open request from Viacom for an employee to be referred to work on the filming of “Family Plan.” In response to this request, the Respondent, on about February 13, 1997, contacted Charging Party Richard D. Brown, who declined the referral. On about February 13, 1997, the Respondent enforced the rule set forth above against Brown, notwithstanding that the Respondent had not previously enforced this rule, and without giving prior notice to Brown and to other individuals registered on the Respondent’s referral list. The Respondent enforced this rule against Brown without prior notice because Brown had engaged in intraunion political activities and had opposed the incumbent leadership of the Respondent.

On about January 10, 1997, Viacom and the Respondent entered into a written agreement that contains, in relevant part, the following provisions:

1. The Producer [Viacom] recognizes the Union as the exclusive representative of its employees employed in the foregoing production who work within the classifications covered by the Union’s jurisdiction.

2. The Producer [Viacom] will secure all local hires within the classification covered by this Consent Agreement from Local 104 [Respondent] and Local 104 shall furnish competent referrals for such jobs pursuant to the Producer’s request.

On about February 13, 1997, the Respondent received an open request from Viacom for an employee to be referred to work on the filming of “Family Plan.” On about February 13, 1997, the Respondent, in response to this request, failed and refused to abide by its rules, regulations, and bylaws, and bypassed Charging Party Jeff Foster who was duly registered on the Respondent’s referral list and was eligible to be dispatched to Viacom. The Respondent engaged in this conduct because Foster filed a charge with, or gave testimony to, the Board under the Act.

Since about March 28, 1996, the Respondent has processed intraunion charges filed against Brown and member Ken Mason. In addition, on about July 5, 1996, the Respondent filed intraunion charges against members Steve Wagner and Birdie Johnson. The Respondent filed these charges against Brown, Mason, Wagner, and Johnson because the individuals did not

comply with the Respondent's rules, regulations, and bylaws pertaining to its Drivers/Wranglers out-of-work referral system, notwithstanding that the Respondent had not enforced these provisions against other similarly situated employees and members. The Respondent filed the aforementioned charges and enforced its rules as set forth above because Brown, Mason, Wagner, and Johnson had engaged in intraunion political activities.

On about January 14, 1997, the Respondent threatened Wagner with a defamation lawsuit because Wagner participated in the investigation of Case 28-CB-4617.

All of the Respondent's acts and conduct described above has caused, or was engaged in for the purpose to cause, employers to discriminate against employees in violation of Section 8(a)(3) of the Act.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has discriminated against users of its hiring hall because of their union and other protected activities, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2), and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has maintained exclusive hiring hall referral rules which (1) require applicants to pay dues and fees, in the absence of a valid union-security agreement; (2) place formerly suspended members at the bottom of the referral list; (3) require applicants to join the Respondent before they may register on the list; and (4) require registrants to have been approved by a majority vote of craft members, we shall order the Respondent to rescind these dispatch rules so as not to discriminate against applicants who are not members of the Respondent or who do not pay dues, who were formerly suspended, or who have not been approved by a majority vote of a craft. In addition, having found that the Respondent discriminatorily enforced its hiring hall rules, we shall order the Respondent to operate its exclusive hiring hall and referral system in a nondiscriminatory manner based on objective criteria. In this regard, we have found that Richard Brown discriminatorily was dropped to the bottom of the referral list because he declined a referral on February 13, 1997. We shall order the Respondent to place Brown in the position on the list where he would have been absent the Respondent's discrimination against him.

Further, having found that the Respondent filed and processed intraunion charges against members because they engaged in internal union activities, we shall order the Respondent to rescind the intraunion charges filed against Richard Brown, Birdie Johnson, Ken Mason, and Steve Wagner, to expunge all references to these charges from its records, and to notify these individuals that this has been done. Having also found that the Respondent discriminatorily bypassed Jeff Foster, who was registered on the referral list, because he filed a charge with, or gave testimony to, the Board, we shall order the Respondent to refer Jeff Foster in a nondiscriminatory manner as his name is reached on the referral list, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in view of the nature of the industry involved in this case, and the itinerant and sporadic working conditions of the affected employees, we shall order the Respondent to mail copies of the attached notice to its members and to other persons who have registered on the Drivers/Wranglers referral list at any time since March 28, 1996, the first date of the occurrence of unfair labor practices.

#### ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Teamsters, Local Union 104, General Teamsters (Excluding Mailers), State of Arizona, an affiliate of International Brotherhood of Teamsters, AFL-CIO, Phoenix, Arizona, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Operating its Drivers/Wranglers referral system in an arbitrary and discriminatory manner.

(b) Maintaining Drivers/Wranglers dispatch rules which discriminate against nonmembers, those who do not pay union dues and fees, formerly suspended members, or those who have not been approved by a majority vote of craft members.

(c) Discriminatorily enforcing a Drivers/Wranglers dispatch rule which places on the bottom of the out-of-work list those registrants who refuse dispatches.

(d) Bypassing employees who are duly registered on the Drivers/Wranglers referral list because they filed charges with, or gave testimony to, the Board.

(e) Filing and processing intraunion charges against members because they engaged in intraunion political activities.

(f) Threatening employees with defamation lawsuits because they participate in the Board's processes.

(g) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Operate its Drivers/Wranglers referral system in a nondiscriminatory manner based on objective criteria.

(b) Rescind the portions of its Drivers/Wranglers dispatch rules which (1) require applicants to pay union membership dues and fees, in the absence of a valid union-security agreement; (2) require applicants to join the Respondent before they may register on the out-of-work list; (3) place formerly suspended members at the bottom of the out-of-work list; and (4) require registrants to have been approved by a majority vote of craft members.

(c) Rescind the intraunion charges filed against Richard Brown, Birdie Johnson, Ken Mason, and Steve Wagner, expunge all references to those charges from the Respondent's records, and notify them in writing that this action has been taken.

(d) Refer Jeff Foster in a nondiscriminatory manner as his name is reached on the out-of-work list, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, as set forth in the remedy section of this decision.

(e) Reinstate Richard Brown to the position on the referral list where he would have been absent the Respondent's discriminatory action in dropping him to the bottom of the referral list because he declined a referral on February 13, 1997.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its business offices and meeting places, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. The Respondent shall duplicate and mail, at its own expense, a copy of the notice to all members

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and other individuals who have been registered on the Drivers/Wranglers referral list maintained and administered by the Respondent at any time since March 28, 1996.

(h) Furnish the Regional Director for Region 28 signed copies of the notice for posting by Lakeside Productions Co., d/b/a Blue Rodeo, and Viacom Productions, if willing, in places where notices to employees are customarily posted.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 29, 1998

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Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

### NOTICE TO MEMBERS

#### POSTED BY ORDER OF THE

#### NATIONAL LABOR RELATIONS BOARD

#### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT operate our Drivers/Wranglers referral system in an arbitrary and discriminatory manner.

WE WILL NOT maintain Drivers/Wranglers dispatch rules which discriminate against nonmembers, those who do not pay union dues and fees, formerly suspended members, or those who have not been approved by a majority vote of craft members.

WE WILL NOT discriminatorily enforce a Drivers/Wranglers dispatch rule which places on the bottom of the out-of-work list those registrants who refuse dispatches.

WE WILL NOT bypass employees who are duly registered on the Drivers/Wranglers referral list because they filed charges with, or gave testimony to, the National Labor Relations Board.

WE WILL NOT file and process intraunion charges against members because they engaged in intraunion political activities.

WE WILL NOT threaten employees with defamation lawsuits because they participate in the National Labor Relations Board's processes.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL operate our Drivers/Wranglers referral system in a nondiscriminatory manner based on objective criteria.

WE WILL rescind the portions of our Drivers/Wranglers dispatch rules which (1) require applicants to pay union membership dues and fees, in the absence of a valid union-security agreement; (2) require applicants to become union members before they may register on the out-of-work list; (3) place formerly suspended members at the bottom of the out-of-work list; and (4) require registrants to have been approved by a majority vote of craft members.

WE WILL rescind the intraunion charges filed against Richard Brown, Birdie Johnson, Ken Mason, and Steve

Wagner, and WE WILL expunge all references to those charges from our records, and notify them in writing that this action has been taken.

WE WILL refer Jeff Foster in a nondiscriminatory manner as his name is reached on the out-of-work list, and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL reinstate Richard Brown to the position on the referral list where he would have been absent our discriminatory action in dropping him to the bottom of the referral list because he declined a referral on February 13, 1997.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL UNION 104, GEN-  
ERAL TEAMSTERS (EXCLUDING MAIL-  
ERS), STATE OF ARIZONA, AN AFFILIATE  
OF INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO